

Inspector General

United States
Department of Defense



The Cost, Oversight, and Impact of Congressional Earmarks Less Than \$15 Million

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Acronyms and Abbreviations

DAPS	Document Automation and Production Service
DOI	Department of the Interior
EPA	Environmental Protection Agency
FTE	Full Time Equivalent
GAO	Government Accountability Office
HHS	Health and Human Services
IG	Inspector General
OMB	Office of Management and Budget
USDA	U.S. Department of Agriculture



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July 11, 2008

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE (ADVANCED
SYSTEMS AND CONCEPTS)
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DIRECTOR, WASHINGTON HEADQUARTERS SERVICE
DIRECTOR, OFFICE OF ECONOMIC ADJUSTMENT

SUBJECT: Report on The Cost, Oversight, and Impact of Congressional Earmarks Less
Than \$15 Million (Report No. D-2008-110)

We are providing this report for your information and use. We performed the
audit in response to a Congressional request.

We appreciate the courtesies extended to the staff. Questions should be directed
to Ms. Amy J. Frontz at (303) 676-7392 (DSN926-7392) or Mr. Joseph A. Powell at
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Results in Brief: The Cost, Oversight, and Impact of Congressional Earmarks Less Than \$15 Million

What We Did

Our objective was to determine the total cost and the oversight of Congressional earmarks within the Department of Defense. We also determined the overall impact of Congressional earmarks on the primary mission and goals of the Department of Defense. The 219 earmarks we selected to review were each less than \$15 million. We previously selected earmarks of \$15 million and more and reported those results in Report No. D-2008-073.

What We Found

- Congress included 2,656 earmarks (totaling \$12.14 billion) in the FY 2007 DoD Appropriations Act Conference Report. Of these, 2,587 earmarks were each less than \$15 million (totaling \$5.87 billion).
- DoD generally performs oversight of earmarks identical to the oversight of other DoD contracts and activities; however, of the 219 earmarks reviewed we identified 9 provided monies to other Federal agencies to contract.
- DoD accounted separately for 152 earmarks and commingled 67 earmarks with other funds.
- DoD does not need centralized tracking of funding execution of earmarks at the DoD level for earmark oversight.
- Some earmarks do not support the DoD mission. Specifically, we identified 4 earmarks that did not support the mission and goals of DoD.

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Introduction

Objectives

Our objective was to determine the total cost and the oversight of Congressional earmarks within the Department of Defense. We also determined the overall impact of Congressional earmarks on the primary mission and goals of the Department of Defense.

Background

We conducted the audit in response to a request by the Honorable Tom Coburn, M.D., U.S. Senator from Oklahoma. The Senator was concerned about the cost, impact, and—in some cases—the ethics of Congressional earmarks. The request included the following earmark definition.

For purposes of this request, a Congressional earmark is a provision of law, a directive, or item represented in any table, chart, or text contained within a joint explanatory statement or a report accompanying a bill (as applicable), that specified the identity of an entity or project, including a defense system, for which funds are authorized or made available in that law (or conference report or bill) and that was not requested by the President in a budget submission to Congress; and the amounts of the funds so authorized or made available.

Because there is no single definition of the term earmark, we are including in Appendix C other definitions of earmarks from the U.S. Senate, the U.S. House of Representatives, the Congressional Research Service, the Office of Management and Budget (OMB) and DoD, and the Government Accountability Office (GAO).

The DoD mission is to provide the military forces needed to deter war and to protect the security of our country. The funding profile for FY 2007 in the DoD FY 2009 budget request showed that in FY 2007 the DoD received \$438 billion to maintain a high level of military readiness, develop and procure new weapon systems for ensuring U.S. battlefield superiority, and support Service members and their families. The funding profile request also showed that in FY 2007 the DoD received an additional \$154 billion for the Global War on Terror. Therefore, the funding profile for FY 2007 in the DoD FY 2009 budget request showed that the DoD received a total of \$592 billion.

For the purposes of this audit, we used the FY 2007 DoD Appropriations Act Conference Report to determine Congressional earmarks for the Department of Defense. According to the definition from Senator Coburn's Congressional request, the FY 2007 Appropriations Act Conference Report contained 2,656 Congressional earmarks totaling \$12.14 billion.

This is the second report in response to Senator Coburn's request. This report provides the results of our review of Congressional earmarks less than \$15 million. The first report provided the results of our review of Congressional earmarks equal to and greater than \$15 million. We issued Report No. D-2008-073, "Cost, Oversight, and Impact of Congressional Earmarks," on March 31, 2008.

Cost, Oversight, and Impact of Congressional Earmarks

Senator Coburn's Congressional request asked the DoD Office of Inspector General to determine the total number and cost of Congressional earmarks, the oversight of earmarks compared to oversight of other DoD contracts, and the overall impact of earmarks on advancing the primary mission and goals of the Department of Defense.

Total Number and Cost of Congressional Earmarks

Congressional Request 1: The total number and cost, including the cost of the earmark itself and related costs such as staff time and administration, of Congressional earmarks within the programs you monitor.

The FY 2007 Appropriations Act Conference Report to accompany the FY 2007 DoD Appropriations Act (109-676) had 2,656 Congressional earmarks totaling \$12.14 billion. Of these earmarks, 2,587 earmarks were each under \$15 million and totaled \$5.87 billion. We selected a sample of 219 earmarks each less than \$15 million. Of the 219 earmarks, 3 were transfers of funds, totaling \$11.6 million. A transfer moves appropriated funds from one account within the U.S. Treasury to another account, or from one program to another program within a U.S. Treasury account. Of the 219 earmarks, 1 earmark for \$800 thousand was used for payments to Air Force military personnel instead of to organizations. The remaining 215 Congressional earmarks totaled \$874.5 million.

DoD does not have cost accounting systems to record separately the costs related to Congressional earmarks, such as staff time and administration. Therefore, we could not determine those costs.

Oversight of Earmarks Compared to Oversight of Other DoD Expenditures

Congressional Request 2: What oversight is conducted on earmarks and how this compares to the oversight conducted on other expenditures such as grants and contracts.

The DoD personnel we interviewed and the respondents to our data call said that DoD performs oversight of earmarks identical to the oversight of other expenditures. The similarities in oversight functions included contract administration, accounting for funds, and tracking full time equivalents. We also considered requirements for centralized tracking of fund execution and the number of earmark contracts awarded.

Contract Administration. Of the 219 earmarks, 9 provided monies to other Federal agencies to contract. For example, the DoD Office of Economic Adjustment transferred a \$12 million earmark to the Federal Railroad Administration. The earmark was for railroad track realignment at Fort Wainwright Eielson Air Force Base. The Federal Railroad Administration awarded the earmark funds as a grant to the Alaskan Railroad Corporation to implement the project.

Of the 219 earmarks we reviewed, 177 had contracts awarded and 42 did not have contracts awarded. The DoD Office of Inspector General is performing a separate, more detailed audit addressing the contract administration of a smaller number of FY 2005 earmarks. The audit of FY 2005 earmarks includes 2 of the 177 earmarks with contracts awarded in FY 2007.

Accounting for Funds. DoD accounted separately for 152 earmarks and commingled 67 earmarks with other funds. For example, Army reported that several earmarks were commingled with funds for larger projects because the Army Commands did not have separate accounting codes for the earmarks.

We noted that DoD does not have criteria requiring centralized tracking of funding execution of Congressional earmarks at the DoD level in our report, “Cost, Oversight, and Impact of Congressional Earmarks,” Report No. D-2008-073, March 31, 2008 (earmarks equal to or more than \$15 million). The GAO report, “Congressional Directives: Selected Agencies Processes for Responding to Funding Instructions,” January 2008, noted a lack of visibility of funds execution of Congressional earmarks at the DoD level and the Under Secretary of Defense (Comptroller) does not have a requirement for maintaining visibility over funding executions of Congressional earmarks at its level. The Under Secretary of Defense (Comptroller) has not received requests for the funding execution status of Congressional earmarks. Should the Under Secretary of Defense (Comptroller) receive a request for funding execution status of a Congressional earmark, DoD will refer the request to the Military Department or Defense agency.

Full Time Equivalents. The Military Departments and all but one of the Defense agencies do not maintain Full Time Equivalent (FTE) data for earmark oversight. FTE is a means to measure a worker’s involvement in a project, in this case the oversight of earmarks. An FTE of 1.0 means the person is equivalent to a full time worker; an FTE of 0.5 is a person who works only half time. The Office of the Deputy Under Secretary of Defense (Advanced Systems and Concepts), the agency that maintained FTE data, reported that it assigned 3.55 FTEs to perform the technical, financial, and contractual activities required for managing all six of its Partnership Intermediary Agreements (a type of earmark). One of these six agreements was included in our sample of 219 earmarks. The average FTE for this one agreement (earmark) was about one-half person per year.

Overall Impact of Earmarks on Advancing the Primary Mission and Goals of the Department of Defense

Congressional Request 3: The overall impact of earmarks on advancing the primary mission and goals of the agency [DoD].

The Congressional earmarks less than \$15 million generally supported the mission and goals of the DoD. We did identify through analysis an additional four earmarks that did not support the DoD mission, for a total of five. See Appendix B for a summary by Military Department and Defense agency of earmarks reviewed. Table 1 identifies the five earmarks that did not support the DoD mission.

Table 1. Earmarks Not Supporting DoD Mission	
<u>Description of Earmark</u>	<u>Amount</u> (millions)
Navy-Digitize DoD Manuals	10.0
Air Force-Preparation for Educators and Students	1.1
Office of Economic Adjustment—George Air Force Base Infrastructure	2.4
Washington Headquarters Service—Center for Applied Science and Technology	2.6
Total Amount of Sampled Earmarks Not Supporting the DoD Mission	\$16.1

1. **Navy—Digitize DoD Manuals.** The earmark for digitization of DoD manuals does not support the DoD mission because it is not consistent with DoD policy that the Document Automation and Production Service (DAPS) is the preferred provider for document conversion and automation services. The earmark fund was used for converting hard copy technical data to electronic formats but not through DAPS. DAPS did not provide input for this earmark, and DAPS did not have any connection with this earmark. DoD has the ability within DAPS to readily develop electronic data from hard copy documentation should DoD really require this digitization, without incurring the cost of this earmark. In addition, the project manager for the earmark had not informed Washington Headquarters Service of their intent to digitize DoD Manuals, as required by DoD Instruction 5025.01.
2. **Air Force—Preparation for Educators and Students.** The earmark for the partnership for innovative preparation of educators and students does not advance the DoD mission to provide the military forces needed to deter war and to protect the security of our country. The earmark funds were issued by Air Force Research Laboratory and awarded to the University of Colorado, Colorado Springs Campus. The earmark funds are provided to fund activity to increase the numbers of kindergarten through college science, technology, engineering, and mathematics students. The purpose of the earmark was not consistent with the primary mission and goals of DoD.
3. **Office of Economic Adjustment—George Air Force Base Infrastructure.** In FY 2007, an earmark provided \$2.4 million to Victorville, California, and the Southern California Logistics Airport related to the George Air Force Base closure. The Office of Economic Adjustment entered into an agreement with the Department of Commerce, Economic Development Administration, to facilitate the execution of this \$2.4 million earmark. Using Department of Commerce Economic Development Administration criteria, this grant was executed to provide the city of Victorville economic adjustment for the installation of roads, water, sewer, and utilities. Victorville continues to experience economic growth and opportunities and as such no longer require assistance attributable to the 1992 Base Realignment and Closure of George Air Force Base. Therefore, while this earmark may contribute to the Department of Commerce Economic Development Administration mission for community revitalization, it does not contribute to the DoD mission.

4. **Washington Headquarters Service, Contracting Center of Excellence—Center for Applied Science and Technology.** We determined that this \$2.6 million earmark redevelops buildings for the benefit of private industry and a university, and therefore does not contribute to the DoD mission of providing military forces needed to deter war and to protect the security of our country. The FY 2007 Defense Appropriations Act Joint Conference Report, Public Law 109-676, Section 8088, provided the Center for Applied Science and Technologies at Jordan Valley Innovation Center a grant appropriation for \$2,600,000 for Phase II of the project. The Jordan Valley Innovation Center is a Government-sponsored initiative to encourage industrial development through the creation of a research center in Springfield, Missouri. DoD, in association with Missouri State University, is redeveloping the former Missouri Farm Association feed mill into a center for nanotechnology. DoD is providing funding to complete redevelopment of the main feed mill structure, and Missouri State University is negotiating with private firms to lease most of the space while reserving part of the space for university functions. Phase II of the project consists of demolishing part of the existing facility and renovating it to accommodate advanced manufacturing for use by private firms. As such, we cannot identify how the DoD grant to redevelop buildings for the benefit of private industry and Missouri State University contributes to the DoD mission. Washington Headquarters Service concurred that this earmark did not support the DoD mission.

We also identified an earmark that the legislation clearly intended to support a DoD mission by fostering collaborations and partnerships among DoD, academia, and industry, with emphasis on small business. However, certain expenditures of the funding were not consistent with the original intent of the funding. Specifically, the Deputy Under Secretary of Defense (Advanced Systems and Concepts) \$6.4 million earmark, DoD Springboard, primarily supports educational efforts, travel, and conferences that do not have a DoD connection and do not support the DoD mission and goals. For example, DoD SpringBoard covered a portion of the travel cost for a team of five high school students to compete in the National Association for Homebuilders student competition; students used computer-aided design software to develop architectural plans for a home using engineering standards. In another case, DoD SpringBoard intends to support a 2008 scientific summer academy module in Glacier Bay National Park in coordination with the Alaska Summer Research Academies of the University of Alaska. This module would be a 10-day scientific expedition for up to nine students, focusing on geology, biologic succession, and oceanography. These examples do not show support for the DoD mission.

Summary

The total number of the Congressional earmarks for DoD in FY 2007 was 2,656 with a funding level totaling \$12.14 billion. Of these earmarks, 2,587 were less than \$15 million (totaling \$5.87 billion). DoD performs oversight of earmarks identical to the oversight of other DoD contracts and activities. We identified 9 earmarks that provided monies to other Federal agencies to contract. DoD commingled and did not separately account for 67 of the 219 earmarks. The mission activities funded by the Congressional earmarks were generally consistent with fulfilling the DoD mission. However, we did

identify four earmarks that did not support DoD mission and goals, and one earmark that a portion of the expenditures was not consistent with the original intent of the funding.

Appendix A. Scope and Methodology

We conducted this performance audit from August 2007 through May 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our conclusions based on our audit objectives.

We obtained and reviewed the FY 2007 Appropriation Act Conference Report to accompany the FY 2007 Department of Defense Appropriations Act (H. Rept. 109-676) for DoD to determine the cost of Congressional earmarks. We compared the FY 2007 Appropriation Act Conference Report to a compilation of Congressional earmarks prepared by the Under Secretary of Defense (Comptroller). We determined the number and cost of Congressional earmarks by reviewing and adding the amount from the compilation provided by the Under Secretary of Defense (Comptroller).

We obtained points of contact from the Under Secretary of Defense (Comptroller) for each Congressional earmark selected for review to determine oversight of Congressional earmarks. We determined oversight for the Congressional earmarks through inquiry with the points of contact.

We inquired with the points of contact whether the Congressional earmarks were consistent with and provided support for the DoD mission to determine the overall impact of Congressional earmarks on advancing the DoD mission. We obtained and reviewed copies of the contracts and grants awarding the Congressional earmarks. The scope of the audit or evaluation was limited in that we did not review the management control program.

Use of Computer-Processed Data

We did not use computer-processed data to perform this audit.

Use of Technical Adjustment

The DoD Office of Inspector General Quantitative Methods Directorate assisted with the audit in selecting a sample.

Prior Coverage

During the last 5 years, the Government Accountability Office (GAO) and the Department of Defense Inspector General (DoD IG), the Environmental Protection Agency (EPA), the U.S. Department of Agriculture (USDA), the Department of Health and Human Services (HHS), and the U.S. Department of the Interior (DOI) issued 6 reports discussing Congressional earmarks. Unrestricted GAO reports can be accessed over the Internet at <http://www.gao.gov>. Unrestricted DoD IG reports can be accessed at <http://www.dodig.mil/audit/reports>.

GAO

GAO Report No. GAO-08-209, "Selected Agencies Processes for Responding To Funding Instructions," January 2008

DoD IG

DoD IG Report No. D-2008-073, "Cost, Oversight, and Impact of Congressional Earmarks," March 31, 2008

EPA

Report No. 2007-P-00024, "Number of and Cost to Award and Manage EPA Earmarks Grants, and the Grants' Impact on the Agency's Mission," May 22, 2007

USDA

Report No. 50601-15-Te, "Review of Fiscal Year 2005 Congressional Earmarks," March 2007

HHS

"Review of Fiscal Year 2005 Congressional Earmarks Provided to the Department of Health and Human Services," February 6, 2007

DOI

"Independent Analysis of Earmarked Funds for the U.S. Department of the Interior (DOI) for Fiscal Year 2006," January 31, 2007

Appendix B. Summary of Earmarks Reviewed By Military Department and Agency

We asked the points of contact for each of the 219 earmarks in our sample the questions that we addressed in the body of this report. Those questions are answered in this table. A more detailed breakout of the information comprising this table may be obtained upon request.

Summary of Earmarks Reviewed by Department and Agency					
Department and Agency	Number of Congressional Earmarks	Is Earmark Contract or Budget Oversight Done the Same as for Other Activities?		Does Earmark Advance the DoD Mission?	
		Yes	No	Yes	No
Army	79	75	4	78	0
Navy	45	45	0	45	0
Air Force	51	51	0	51	0
Other DoD Agencies	<u>44</u>	<u>39</u>	<u>5</u>	<u>44</u>	<u>0</u>
Total	219	210	9	218	0

Appendix C. Definitions of Earmarks

We conducted this audit at the request of the Honorable Tom Coburn, U.S. Senator from Oklahoma. We used the definition of earmark provided in the request. The Congressional Research Service has noted there is not a sole definition of the term earmark accepted by all observers of the appropriation process. According to the Congressional Research Service:

There is not a single specific definition of the term *earmark* accepted by all practitioners and observers of the appropriations process, nor is there a standard earmark practice across all 13 regular appropriations bills. According to the Congressional Quarterly's American Congressional Dictionary, under the broadest definition 'virtually every appropriation is earmarked.' In practice, however, earmarks are generally defined more narrowly, often reflecting procedures established over time that may differ from one appropriation bill to another. For one bill, an earmark may refer to a certain level of specificity within an account. For other bills, an earmark may refer to funds set aside within an account for individual projects, locations, or institutions.

Although there is not a sole definition of the term earmark, we have identified the following definitions for earmarks from the U.S. Senate, the U.S. House of Representatives, the Congressional Research Service, OMB and DoD, and GAO.

1. Senate Rules **PUBLIC LAW 110–81** **September 14, 2007**

Subtitle B—Earmark Reform
SEC. 521. CONGRESSIONALLY DIRECTED SPENDING.
The Standing Rules of the Senate are amended by adding
at the end the following:

RULE XLIV
CONGRESSIONALLY DIRECTED SPENDING AND RELATED ITEMS

The term 'congressionally directed spending item' means a provision or report language included primarily at the request of a Senator providing, authorizing, or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.

2. House Rules **RULES OF THE HOUSE OF REPRESENTATIVES** **ONE HUNDRED TENTH CONGRESS** **[Established with the adoption of H. Res. 6 on January 4th and 5th, 2007]**

RULE XXI
RESTRICTIONS ON CERTAIN BILLS

9(d) For the purpose of this clause, the term 'congressional earmark' means a provision or report language included primarily at the request of a Member, Delegate, Resident Commissioner, or Senator providing, authorizing or recommending a specific amount of discretionary budget

authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula driven or competitive award process.

3. Congressional Research Service

Provisions associated with legislation (appropriations or general legislation) that specify certain congressional spending priorities or in revenue bills that apply to a very limited number of individuals or entities. Earmarks may appear in either the legislative text or report language (committee reports accompanying reported bills and joint explanatory statement accompanying a conference report).

4. OMB/DoD

Funds provided by the Congress for projects or programs where the congressional direction (in bill or report language) circumvents Executive Branch merit-based or competitive allocation processes, or specifies the location or recipient, or otherwise curtails the ability of the Executive Branch to manage critical aspects of the funds allocation process.

- Earmarks vs. Unrequested Funding. At the broadest level, unrequested funding is any additional funding provided by the Congress—in either bill or report language—for activities/projects/programs not requested by the Administration. Earmarks are a subset of unrequested funding. The distinction between earmarks and unrequested funding is programmatic control or lack thereof of in the allocation process.
- Earmarks and Programmatic ‘Control.’ If the congressional direction accompanying a project/program/funding in an appropriations bill or report or other communication purports to affect the ability of the Administration to control critical aspects of the awards process for the project/program/funding, this IS an earmark. Note: The definition of ‘control critical aspects’ includes specification of the location or recipient or otherwise circumventing the merit-based or competitive allocation process and may be program specific. However, if the Congress adds funding and the Administration retains control over the awards process for the project/program/funding, it is NOT an earmark; it is unrequested funding.
- Earmarks Include:
 1. Add-ons. If the Administration asks for \$100 million for formula grants, for example, and Congress provides \$110 million and places restrictions (such as site-specific locations) on the additional \$10 million, the additional \$10 million is counted as an earmark.
 2. Carve-outs. If the Administration asks for \$100 million and Congress provides \$100 million but places restrictions on some portion of the funding, the restricted portion is counted as an earmark.
 3. Funding provisions that do not name a recipient, but are so specific that only one recipient can qualify for funding.

OMB has used this definition to gather data on earmarks internally. This definition is similar to the definition that the Congress recently developed for disclosing earmarks in spending legislation (H. Res. 6 and the Senate-passed version of S. 1).

5. GAO

Congress or its committees may use formal vehicles to provide written funding instructions for agencies or to express preferences to agencies on the use of funding. These formal vehicles include statutes (i.e., authorization or appropriations acts) or House, Senate, and conference reports comprising significant parts of the legislative history for a given statute. Often referred to as 'earmarks,' these written instructions range from broad directions on policy priorities to specific instructions.

Team Members

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